IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 21925 of 2005(I)

PETITIONER:

S.RAGHAVAN, PYTHODI PUTHENPURAYIL,
NADUVATHU CHERRY, CHAVARA SOUTH,
KARUNAGAPPALLY, KOLLAM DISTRICT.

BY ADV. SRI.N.DHARMADAN (SR.)
SRI.M.R.SABU

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR AS COMMISSIONER
AND CHAIRMAN OF THE ADVISORY COMMITTEE FOR
FREEDOM FIGHTERS, OFFICE OF THE COLLECTORATE,
KOLLAM.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.21925/2005 I

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF JUDGMENT IN W.A.2461/02 DTD.19/11/04 OF THIS HON'BLE COURT.**

EXT.P2: **COPY OF REPRESENTATION DTD. 16/02/98 BY PETITIONER.**

EXT.P3: **COPY OF JUDGMENT IN O.P.9136/99 DTD. 30/11/99 OF THIS HON'BLE COURT.**

EXT.P4: **COPY OF CO-PRISONERS CERTIFICATE DTD. 21/03/93 ISSUED BY SRI. K.P.NARAYANA PILLAI TO PETITIONER.**

EXT.P4(A): **COPY OF CO-PRISONERS CERTIFICATE DTD. 22/03/92 ISSUED BY SRI. GEEVARGHESE UNNUNI TO THE PETITIONER.**

EXT.P4(B): **COPY OF CO-PRISONERS CERTIFICATE DTD.1/12/97 ISSUED BY SRI. K.GOPINATHAN TO PETITIONER.**

EXT.P4(C): **COPY OF CO-PRISONERS CERTIFICATE DTD. NIL ISSUED BY SRI. P.K.BHASKARAN TO PETITIONER.**

EXT.P5: **COPY OF NON-AVAILABILITY OF RECORDS CERTIFICATE (NARC) DTD. 18/07/2000 ISSUED BY 1ST CLASS MAGISTRATE COURT, KARUNAGAPPALLY.**

EXT.P6: **COPY OF THE COVERING LETTER DTD. 4/02/05 BY PETITIONER.**

EXT.P7: **COPY OF ORDER NO.107864/FFP-B3/04/GAD DTD. 11/03/05 ISSUED BY GOVERNMENT.**

EXT.P8: **COPY OF ORDER DTD. 2/09/96 ISSUED BY GOVERNMENT.**

EXT.P9: **COPY OF JUDGMENT IN O.P.21180/99 DTD. 8/12/99 OF THIS HON'BLE COURT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

T.R.RAMACHANDRAN NAIR, J.

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W.P.(C).No. 21925 of 2005 (I)

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Dated this the 26th day of July, 2007

J U D G M E N T

Going by the records, the writ petitioner is a person who is aged about 85 by now. Still he is before this Court seeking for grant of pension under the Kerala Freedom Fighters' Pension Scheme.

2. The petitioner had filed an earlier original petition, namely, O.P.No.1694/2001 which was dismissed on the ground of delay. In W.A.No.2461/2002, the Division Bench of this Court reversed the above judgment and issued directions to the respondents to consider Ext.P6 representation after taking into account Ext.P10 judgment. Ext.P10 judgment therein is Ext.P3 herein. In Ext.P1 judgment, the Division Bench had observed after relying upon the decisions of the Hon'ble Supreme Court in **Mukund Lal Bhandari vs.Union of India [AIR 1993 SC 2127]** & **Gurdial Singh vs.Union of India and others [(2001) 8 SCC 8]**, that while considering the case of freedom fighters technical approach should

not be taken and the matter has to be considered keeping in view of the object of the scheme. Ext.P3 is the judgment of this Court in O.P.No.9136/1999. There, the petitioner therein had relied upon the certificates issued by Sri.V.K.Karunakaran and Sri.P.K.Bhaskaran as well as Sri.Ummini Raghavan. After referring to the above decisions of the Supreme Court, this Court directed grant of pension in the light of the certificates produced in that case. Ext.P4 produced herein is the Co-prisoner's Certificate of Sri.K.P.Narayana Pillai, who was a Thamrapathra holder and was a recipient of Central Freedom Fighters' Pension under the Ministry of Home Affairs Order No.19/1/GENL/FF VII, dated 12/11/1973. In fact, in Ext.P4, Sri K.P.Narayana Pillai has recorded in detail the details of his imprisonment including convict number etc. on various occasions. He had certified that the petitioner herein is a bona fide freedom fighter and who was lodged in the same jail along with him during the period from 115 Chingam to Kumbham M.E 115. It was also certified that the petitioner was also along with him for seven months in Cusba Police Station, Kollam. Ext.P4 (a) is the certificate issued by Sri.Geevarghese Unnunni, who is the recipient of Central Freedom Fighters' Pension. Ext.P4(b) is the

certificate issued by Sri.K.Gopinathan, a recipient of the Central Freedom Fighters' Pension. Ext.P4(c) is the certificate of Sri P.K.Bhaskaran, a recipient of the Central Freedom Fighters' Pension. In these certificates also they have clearly stated that the petitioner is a bona fide freedom fighter who had also suffered imprisonment on account of his participation in the freedom movement. Ext.P5 is the application submitted by the petitioner before the Judicial Magistrate of the First Class, Karunagappally, for getting relevant documents relating to C.C.No.36/1114. The endorsement therein shows that the records of that case are not preserved there. The petitioner again moved the Chief Secretary after the judgment of the Division Bench by Ext.P6. Thereafter, the Government has rejected his claim as per Ext.P7.

3. At the outset it has to be mentioned here that neither the spirit behind the binding observations of the Hon'ble Supreme Court or that of the Division Bench in Ext.P1 has been borne in mind by Government while issuing Ext.P7. The approach is too technical which has been deprecated by this Court in various decisions. The petitioner has also produced Exts.P8 and P9 along

with the reply affidavit. Ext.P8 is a communication issued to him referring to his application dated 20/01/1993. It would evidently show that he had been an applicant from 1993 onwards. In Ext.P9 judgment, this Court considered the validity of a Co-prisoners' Certificates issued by Sri.Geevarghese Unnunni and Sri.K.Gopinathan. After referring to the above certificates, a learned Single Judge of this Court directed the respondents to reconsider the matter in accordance with the terms of the judgment. His Lordship was also of the view that the application was to be considered in view of the certificates issued by the various freedom fighters and in view of the fact that the petitioner therein had undergone imprisonment.

4. The first respondent has filed a counter affidavit denying the contentions of the petitioner. Mainly they have relied on the Circular, dated 31/12/1993, issued by the Government stating that applications or appeal or review petition received after 31/03/1994 will be considered only on production of acceptable documentary evidence such as copy of arrest warrant, court/jail records. I find that for two reasons this stand is not correct. Firstly, going by

Ext.P8 the first application by the petitioner is dated 20/01/1993. Therefore, on the plain terms of the Circular alone this application should not have been thrown out. Secondly, this circular cannot prescribe conditions which are more stringent than that of the original scheme. It is well settled that a circular cannot whittle down or act against plain terms of a statute, rules, notifications etc. The above principle is well settled by various decisions of the Hon'ble Supreme Court and of this Court and, therefore, the reason stated in para 4 of the counter affidavit placing reliance on the said circular cannot be accepted legally. The other reason stated by the Government in the counter affidavit for passing Ext.P7 is that the certificates of the Co-prisoners were not acceptable because those did not have minimum imprisonment of one year etc. It is rather surprising to note that inspite of the fact that these freedom fighters are recipients of pension under the very same scheme, the Government insists the poor petitioner herein to produce the details of imprisonment etc. of those well known freedom fighters. The approach therefore, is rather technical. The various certificates produced by the petitioner have been acted upon in Ext.P3 judgment as well as in Ext.P9 judgment.

Further, according to me, when certificates have been issued by well known freedom fighters who are recipients of State Freedom Fighters' Pension, the authorities cannot insist that the petitioner should produce further details of their incarceration etc. Going by Sub Clause 5 of Clause 20 of the Scheme what is required is only that freedom fighter should mention only the details that is available with him and are reproduced based on his memory and it is up to the authorities to find out from the relevant records about the various details. But herein that exercise need not be insisted upon mainly because of these certificates have been issued by well known freedom fighters who are recipients of the pension.

5. It is clear from the records produced from this writ petition that the petitioner is a bona fide freedom fighter who has suffered a lot for participating in the national freedom struggle. It is unfortunate to note that even after 14 years of his first application he is again before this Court seeking for the grant of pension.

6. In Ext.P7 order the Government has adverted to certain reasons to reject his claim. First one is that the co-prisoner

certificate issued by Sri.Geevarghese Unnunni is not acceptable. It is stated therein that the signature of the certifier is not seen genuine. What was the initiative made by the Government to find that the signature of the certifier is not genuine is not stated in Ext.P7. Apart from that the certificate issued by Sri.Geevarghese Unnunni was recognised by other judgments of this Court, as noted already.

7. As regards the certificate issued by Sri.K.P.Narayana Pillai what is stated is that the certifier is not having one year imprisonment as per official records. Ext.P4 will show that the various details relating to Sri.K.P.Narayana Pillai have been stated duly therein. He has stated that he has faced 17 months and 14 days actual imprisonment during freedom struggle and was lodged in Central Jail, Thiruvananthapuram and Kollam lockup. He was convict No.8595 as per case No.CC240/1122 and Convict No.4646 as per case No.C.C 25/1118. He was sentenced for one year and fine for Rs.500/- pursuant to which he was imprisoned for four months and one day in Central Jail, Thiruvananthapuram. All these details have been stated in Ext.P4 and if the authorities had any

doubt in those matters that too could have been checked up with relevant records. Apart from that it is undisputed fact that Sri.K.P.Narayana Pillai is a recipient of Central Freedom Fighters' Pension details of which have been stated in Ext.P4 itself. The same would have been granted to him only on the recommendation of the State Government. When that was recommended, these details were clearly available with the Government. Therefore, there is no point in putting the clock back and stating that the details of Sri.K.P.Narayana Pillai is not acceptable. The next aspect to be noticed is the reason stated that the name of the movement is not seen mentioned. It is well known that the national freedom movement was an on going movement and even it is well known that certain incidents and struggles were known well by their names also. There is nothing to differentiate between one movement and another, and participation of a particular person cannot be separated from each of these different agitations. Therefore, the said reason is also not correct. The next aspect is, as pointed out earlier, about the certificates from Sri.K.Gopinathan and Sri.P.K.Bhaskaran. The Government have rejected the other certificates on the ground that certifiers did not have minimum

imprisonment. The reasons state above as regards the certificate issued by Sri.K.P.Narayana Pillai is equally applicable as regards Sri.K.Gopinathan and Sri.P.K.Bhaskaran . There was no reason to reject the certificate issued by Sri.K.Gopinathan who also was a recipient of Freedom Fighters' Pension. When the certifier himself was granted pension there is no point in directing to show details of his incarceration again. It cannot be disputed that the Government was never in doubt about the grant of pension to them. When the certifier is a freedom fighter who has been granted pension under the relevant scheme there is no point in relying on such technical aspects to reject the claim.

8. In O.P.No.3868/2002 in similar circumstances this Court held that technical aspect of the matter regarding proof of the claim of imprisonment have been liberalised in view of the decision of the Supreme Court in [(2001) 8 SCC 8] wherein the co-prisoner certificate was acted upon. His Lordship was of the view that when the averments of the petitioner is not controverted and when the same are supported by affidavit of co-prisoner, the same cannot be disbelieved at all.

Judged in the light of the above principles, I am of the view that the reasons stated by the Government to reject the Co-prisoners Certificates are not reasonable. The approach reveals only a hyper technical one and the objections raised are unsustainable. Therefore, it is declared that the petitioner is entitled for pension under the Kerala Freedom Fighters Pension Scheme and Ext.P7 is therefore, quashed. There will be a direction to the first respondent to sanction Freedom Fighters' Pension to the petitioner with arrears, at any rate, from 19/11/2004 the date of Ext.P1. Appropriate orders will be passed within two months from the date of receipt of a copy of this judgment.

T.R.RAMACHANDRAN NAIR,
Judge

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